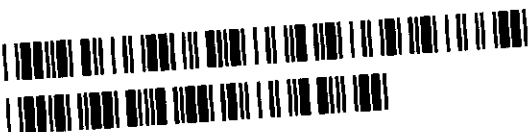


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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY



CV 01-01528 #00000006

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THOMAS R. DREILING, on behalf of
INFOSPACE, INC.,

Plaintiff,

v.

STILES A. KELLETT, JR., an individual; and
KELLETT PARTNERS LP, a limited
partnership; and NAVEEN JAIN and
ANURADHA JAIN, husband and wife, and
their marital community, THE JAIN FAMILY
IRREVOCABLE TRUST, THE NAVEEN JAIN
GRAT NO. 1 TRUST, and THE ANURADHA
JAIN GRAT NO. 1 TRUST,

Defendants,

and

INFOSPACE, INC.,

Nominal Defendant.

NO. C01-1528P

FIRST AMENDED COMPLAINT FOR
RECOVERY OF SHORT-SWING
PROFITS UNDER § 16(b) OF THE
SECURITIES EXCHANGE ACT OF 1934

A. IDENTIFICATION

1. *Plaintiff Dreiling.* Thomas R. Dreiling ("Dreiling") is an individual
residing in the Western District of Washington. Plaintiff is presently an InfoSpace

6

1 shareholder.

2 2. **InfoSpace, Inc.** InfoSpace is a company whose principal place of
3 business is in King County, Washington. This suit is brought on behalf of InfoSpace to
4 obtain relief and recovery for InfoSpace.

5 3. **Defendant Kellett.** Stiles A. Kellett, Jr. ("Kellett") is a resident of
6 Atlanta, Georgia. As the chairman of Kellett Investment Corporation and the general
7 partner of defendant Kellett Partners LP, defendant Kellett has regularly transacted
8 business in King County, Washington.

9 4. **Defendant Kellett Partners.** Kellett Partners LP ("Kellett Partners")
10 is a partnership that transacts business in King County, Washington. Kellett Partners
11 and its affiliate, Kellett Investment Corporation, serve as an investment fund for later-
12 stage, high-growth private companies. One such company, before it went public, was
13 InfoSpace.

14 5. **John E. Cunningham.** John E. Cunningham ("Cunningham") is the
15 president of Kellett Investment Corporation and the general partner of Clear Fir
16 Partners, L.P., both of which maintain offices, and conduct business, in King County
17 Washington. Cunningham has served as a director of InfoSpace since July 1998.

18 6. **Clear Fir Partners, L.P.** Clear Fir Partners L.P. ("Clear Fir") is a
19 limited partnership doing business in King County, Washington. It serves as an
20 investment fund for later-stage, high growth private companies. One such company,
21 before it went public, was InfoSpace. On information and belief, Cunningham controls
22 Clear Fir Partners.

23 7. **Rufus W. Lumry III.** Rufus W. Lumry III ("Lumry") has served as
24 a director of InfoSpace since December 1998. Lumry is the founder, principal
25 stockholder, sole director and President of Acorn Ventures, Inc., a Washington
26 Corporation. Acorn Ventures, Inc. is the sole stockholder of Acorn Ventures I.S., LLC, a

1 Washington Limited Liability Corporation. Lumry controls Acorn Ventures I.S., LLC
 2 and Acorn Ventures, Inc. Lumry also controls, and is the majority owner of, Internet
 3 Ventures, LLC.

4 8. *Acorn Ventures, Inc.* Acorn Ventures, Inc. ("Acorn Inc.") is the sole
 5 stockholder of Acorn Ventures I.S., LLC. Acorn Inc. is controlled by Lumry.

6 9. *Acorn Ventures I.S., LLC.* Acorn Ventures I.S., LLC ("Acorn LLC")
 7 is owned by Acorn Inc. and controlled by Lumry.

8 10. *Defendants Jain and Jain Trusts.* Naveen Jain and his wife,
 9 Anuradha Jain, reside in King County, Washington. Mr. Jain, the founder of InfoSpace,
 10 was its Chief Executive Officer from March 1996 to April 2000. He was its President
 11 from March 1996 to November 1998, and was its sole Director from March 1996 to
 12 June 1998. From June 1998 to present, Mr. Jain has been Chairman of InfoSpace's Board
 13 of Directors. In January 2001, he again became its Chief Executive Officer. Naveen Jain
 14 controls and dominates InfoSpace, and has done so at all relevant times. Mr. Jain is,
 15 and at all relevant times has been, InfoSpace's largest stockholder. He presently owns
 16 approximately 20 percent of the outstanding common stock of InfoSpace. Anuradha
 17 Jain is, and has been, an InfoSpace stockholder and employee. All actions of Mr. Jain,
 18 including sales of InfoSpace stock, were for the benefit of himself, his spouse, and their
 19 marital community (collectively, "Jain"). Mr. Jain has sole voting power and control of
 20 at least three trusts: the Jain Family Irrevocable Trust, the Naveen Jain GRAT No. 1 (a
 21 grantor retained annuity trust) and the Anuradha Jain GRAT No. 1 (also a grantor
 22 retained annuity trust) (collectively, the "Trusts"). Naveen and Anuradha Jain control
 23 the investments of the Trusts.

24 B. JURISDICTION AND VENUE

25 11. *Jurisdiction.* Jurisdiction in this Court arises under § 27 of the
 26 Securities Exchange Act of 1934, 15 U.S.C. § 78aa.

1 12. *Venue.* Venue is proper in this Court under § 27 of the Securities
2 Exchange Act of 1934, 15 U.S.C. § 78aa, because, *inter alia*, all the defendants transact
3 business in this district and defendants Jain are inhabitants of this district.

4 C. PRELIMINARY ALLEGATIONS

5 13. *Plaintiff's Ownership.* Plaintiff purchased 100 shares (400 shares
6 split-adjusted) of stock in InfoSpace on or about December 8, 1999, in his IRA account.
7 Plaintiff has, at all times since his initial purchase to the present, been a stockholder of
8 InfoSpace.

9 14. *Demand.* Plaintiff made a statutory demand upon the InfoSpace
10 board of directors on October 19, 2001. Plaintiff demanded that the InfoSpace Board of
11 Directors recover profits realized by Jain, the Trusts, Kellett and Kellett Partners, LP. In
12 response to this demand, InfoSpace failed to institute or maintain suit to recover profits
13 realized by Jain, the Trusts, Kellett or Kellett Partners, LP within the statutory 60-day
14 period. Given this failure to institute suit, plaintiff is empowered under § 16(b) of the
15 Securities Exchange Act of 1934, 15 U.S.C. § 78p(b) to bring and maintain suit on behalf
16 on InfoSpace.

17 15. *Adequate Representation.* Plaintiff fairly and adequately
18 represents the interests of the non-insider shareholders of InfoSpace. Each such non-
19 insider shareholder has an interest identical to plaintiff's—to recover, for InfoSpace, the
20 ill-gotten profits defendants realized through violations of § 16(b) of the Securities
21 Exchange Act of 1934, 15 U.S.C. § 78p(b).

22 D. FACTS

23 Short-Swing Transactions

24 16. *Transactions.* Within periods of less than six months, the
25 defendants engaged in numerous purchases and corresponding sales, or sales and
26 corresponding purchases, of InfoSpace stock and/or other InfoSpace securities.

1 **17. Failure to Report Transactions.** Defendants Kellett, Kellett
 2 Partners and Jain, including the Trusts controlled by Jain, routinely either failed to
 3 report transactions as required by the SEC or filed incomplete or inaccurate reports. As
 4 a result, some transactions subject to this action occurred more than two years ago, but
 5 were not disclosed as required under of § 16(a) of the Securities Exchange Act of 1934,
 6 15 U.S.C. § 78p(a), thereby tolling the two-year statute of limitations. Other transactions
 7 were not reported, and still have not been reported, as required by § 16(a). As to those
 8 transactions, the statute of limitations has been tolled.

9 **18. Profit From Transactions.** The defendants personally profited
 10 from the corresponding purchases and sales or sales and purchases of InfoSpace stock
 11 and/or other InfoSpace securities.

12 **Defendants Are Directors or Principal Stockholders**

13 **19. 10% Ownership - Kellett and Kellett Partners.** Defendants Kellett
 14 and Kellett Partners, in conjunction with Cunningham, Clear Fir, Lumry, Acorn Inc. and
 15 Acorn LLC, agreed to act together for the purpose of acquiring, holding, voting or
 16 disposing of InfoSpace stock. They combined to further a common objective in
 17 acquiring, holding, voting or disposing of InfoSpace stock. Defendants Kellett and
 18 Kellett Partners, in conjunction with Cunningham, Clear Fir, Lumry, Acorn Inc. and
 19 Acorn LLC, therefore formed a group under SEC Rule 13d-5. The beneficial ownership
 20 of this group exceeded 10% of InfoSpace's stock from December 15, 1998 through at
 21 least July 31, 2000. Examples of coordinated activity include, but are not limited to, the
 22 following:

23 (a) On May 21, 1998, Acorn LLC, Cunningham and Kellett
 24 Partners, and they alone, coordinated the purchase of shares of stock in InfoSpace prior
 25 to its initial public offering. In conjunction with this coordinated purchase, the Acorn
 26 LLC, Cunningham and Kellett Partners, and they alone, received common stock and

1 warrants to purchase common stock at identical per share and exercise prices. Pursuant
2 to the terms of a "Co-Sale Agreement" entered into as of May 21, 1998, between each of
3 Acorn LLC, Cunningham and Kellett Partners, and them alone, on the one hand, and
4 InfoSpace founder Naveen Jain, on the other, Acorn LLC, Cunningham and Kellett
5 Partners acquired identical rights protecting their investments in InfoSpace in the event
6 that Jain began selling his InfoSpace shares before an initial public offering by
7 InfoSpace.

8 (b) Also on May 21, 1998, InfoSpace entered into identical
9 "Consulting Agreements" with Acorn LLC, Cunningham and defendant Kellett
10 Partners. No other persons or entities entered into similar agreements. Pursuant to
11 these Consulting Agreements, Acorn LLC, Cunningham and Kellett Partners were to
12 provide "assistance in defining the Company's business strategy, identifying and
13 meeting with sources of financing and assisting the Company in structuring and
14 negotiating such financing." Acorn LLC, Cunningham and defendant Kellett Partners
15 were provided indemnification under the Consulting Agreements.

16 (c) On August 6, 1998, prior to its initial public offering,,
17 InfoSpace sold shares of stock at \$8.00 in a coordinated private placement to Acorn
18 LLC, Cunningham and Kellett Partners, but no others.

19 (d) Acorn LLC/Lumry, Cunningham/Clear Fir and Kellett
20 Partners have coordinated activity in the pre-initial public offering financing of other
21 ventures as well, including imagex.com and meals.com.

22 **20. 10% Ownership – Jain.** At all relevant times Jain has owned at
23 least 10% of the outstanding shares of InfoSpace.

24 **21. Directors – Kellett and Kellett Partners.** Defendants Kellett and
25 Kellett Partners are, and have been since July 1998, "directors" for purposes of § 16(a)
26 and (b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(a). Defendants Kellett

1 and Kellett Partners deputized John E. Cunningham to represent their interests on
 2 InfoSpace's Board of Directors. For purposes of liability under § 16(b)(2), Kellett and
 3 Kellett Partners are "directors."

4 22. *Director - Jain.* At all relevant times Jain has been a director of
 5 InfoSpace.

6 E. CAUSE OF ACTION

7 Short-Swing Profits Generated In Violation of § 16(b) of the 8 Securities Exchange Act of 1934, 15 U.S.C. § 78p(b).

9 23. *Incorporation.* All allegations in the preceding paragraphs are
 10 incorporated herein.

11 24. *Breach.* The defendants personally profited by purchases and
 12 sales, or sales and purchases, of InfoSpace stock and/or other InfoSpace securities by
 13 engaging in such transactions within periods of time that were less than six months in
 14 duration. The defendants have violated § 16(b) of the Securities Exchange Act of 1934,
 15 15 U.S.C. § 78p(b).

16 25. *Remedy.* The defendants must disgorge all profits from short-
 17 swing transactions to InfoSpace, in an amount to be proven at trial.

18 F. RELIEF REQUESTED

19 Plaintiff respectfully requests the following relief in behalf of InfoSpace:

20 (a) Against the defendants, for all profits from the transactions
 21 prohibited by § 16(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(b), in an
 22 amount to be proven at trial;

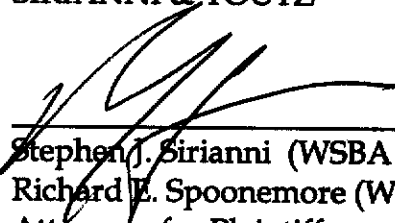
23 (b) An award of pre-judgment and post-judgment interest on all
 24 damages awarded, or restitution or disgorgement ordered;

25 (c) An award of costs and attorneys' fees against all defendants;
 26 and

1 (d) Any other relief, of any type or nature, that this Court deems
2 just, equitable or necessary.

3 DATED: December 19, 2001.

4 SIRIANNI & YOUTZ

5
6 
7 _____
8 Stephen J. Sirianni (WSBA #6957)
Richard E. Spoonemore (WSBA #21833)
Attorneys for Plaintiff

1
2 **VERIFICATION**

3 I, Thomas R. Dreiling, being first duly sworn, am the plaintiff in the
4 above-captioned matter, have read the foregoing First Amended Complaint and know
5 the contents thereof, and, to the best of my knowledge, believe the allegations set forth
6 therein to be true.

7 DATED this 18 day of December, 2001, at Seattle, Washington.

8
9 Thomas R. Dreiling
10 Thomas R. Dreiling, Plaintiff

11 STATE OF WASHINGTON)
12) ss.
COUNTY OF KING)

13 On this day personally appeared before me, the undersigned, a Notary Public in and for the
14 State of Washington, duly commissioned and sworn, Thomas R. Dreiling, to me known to be the
15 individual described in and who executed the within and foregoing instrument, and acknowledged
that he signed the same as his free and voluntary act and deed, for the uses and purposes therein
mentioned.

16 GIVEN under my hand and official seal this 18th day of December, 2001.

17
18 Texanna Casey Thompson
NOTARY PUBLIC in and for the State of Washington,
residing at Seattle

19 My commission expires: 9/04, 2005

20 Texanna Casey Thompson
21
22
23
24
25
26

CC: TO JUDGE WIK

HON. MARSHA J. PECHMAN

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THOMAS R. DREILING, on behalf of
INFOSPACE, INC.,

Plaintiff,

v.

STILES A. KELLETT, JR., an individual; and
KELLETT PARTNERS LP, a limited
partnership,

Defendants.

NO. C01-1528P

DECLARATION OF SERVICE

I declare, under penalty of perjury under the laws of the State of Washington, that on December 19, 2001, I caused a copy of 1) NOTICE OF EXPIRATION OF STAY and 2) FIRST AMENDED COMPLAINT FOR RECOVERY OF SHORT-SWING PROFITS UNDER § 16(b) OF THE SECURITIES EXCHANGE ACT OF 1934 to be served, by legal messenger, on:

Barry M. Kaplan
PERKINS COIE LLP
1201 Third Ave., Suite 4800
Seattle, WA 98101-3099

DATED this 19th day of December, 2001, at Seattle, Washington.

Stacy A. Hoffme
Declarant